Amerco's case, I therefore allow the appeal with costs.

Appeal allowed.

Solicitors : *Niru & Co.; Godwin & Co.*

RE SINGAPORE SOUVENIR INDUSTRY (PTE.) LTD.; DR. H. C. HUANG DAN RAKAN–RAKAN v. THE LIQUIDATOR OF SINGAPORE SOUVENIR INDUSTRY (PTE.) LTD.

[O.C.J. (Sinnathuray J.) April 24, 1985]

[Singapore – Originating Summons No. 129 of 1983]

Practice and Procedure – Company in voluntary liquidation – Plaintiffs' claim raises same issue – Subject matter of prior existing consent judgment – Abuse of process of court – Frivolous and vexatious – R.S.C. 1970, O.18 r.19.

In this application, the defendant (the liquidator) sought an order to dismiss the originating summons of the plaintiffs on the grounds that (1) it was frivolous and vexatious, and (2) it was an abuse of the process of the Court.

The plaintiffs contended that they had paid for a piece of land on behalf of the Company of which the defendant was the liquidator. The defendant contended that the contention of the plaintiffs had been the subject matter of an action between the Company and Dr. Huang who in this Originating Summons raises the same issue but in the name of his firm. The result of that action was that there was a settlement and a consent judgment was entered and this has not been set aside. The plaintiffs were dissolved in November 1970 and a receiver was appointed. The Company was wound up in January 1979, and Dr. Huang submitted the proof of debt against the Company in 1982. He and the other directors of the Company signed the statement regarding its assets and liabilities. It is not shown in the statement that the Company was indebted to the plaintiffs or that the plaintiffs had paid $148,552 for the land.

Held, allowing the defendant's application and dismissing the plaintiffs' Originating Summons with costs: (1) the proceedings commenced by the Originating Summons of the plaintiffs were an abuse of the process of the Court;

(2) the plaintiffs' claim was also frivolous and vexatious.

Case referred to:

(1) *Re Art Reproduction Co. Ltd.* [1951] 2 All E.R. 984.

ORIGINATING SUMMONS.

D. Daniel for the defendant/liquidator.
Andrew Ee for the plaintiffs.

Cur. Adv. Vult.

Sinnathuray J. : This application before me on March 29, 1985 in Summons-in-Chambers No. 2399/85 is for an order on the part of the defendant that the Originating Summons that commenced these proceedings be dismissed out of Court under Order 18 rule 19 and under the inherent jurisdiction of the Court on the grounds that (1) it is frivolous and vexatious, and (2) it is an abuse of the process of the Court, and for other orders relating to costs.

Mr. Daniel for the defendant, on the second ground that these proceedings be dismissed as an abuse of the process of the Court, makes two submissions.

It is the contention of the plaintiffs in this Originating Summons that the plaintiffs paid for a piece of land on behalf of the Company of which the defendant is the liquidator. The submission for the defendant is that this contention of the plaintiffs had been the subject matter of an action between the Company and Dr. Huang who, in this Originating Summons, raises the same issue but in the name of his firm.

It is not in dispute that in that action the subject matter was the piece of land, and the result of the litigation was that there was a settlement and a consent Judgment was entered which is exhibited in an affidavit in these proceedings. The relevant portion of that Judgment reads as follows:

> " . . . Upon the Solicitors for the Defendant [Dr. Huang] confirming the title of the plaintiffs [the Company under Liquidation] to the lands [the piece of land]. . . by consent it is . . . adjudged that the Plaintiffs and the Defendant be at liberty to withdraw their respective claims and counterclaims . . . "

After the consent judgment was entered, it would appear that there was some correspondence between the solicitors for the parties, but the crucial fact is that the consent Judgment has not been set aside. So, Mr. Daniel argues that there being a Judgment on record, it would be an abuse of the process of the Court to allow Dr. Huang's firm to raise the issue of the land again in these proceedings. I accept this submission. This, in my opinion, is sufficient reason to dismiss this Originating Summons.

However, there is another submission of Mr. Daniel on the ground of abuse of the process of the Court. The facts relied on are that the plaintiffs, the firm, was dissolved on November 24, 1970 and a receiver had been appointed. It is therefore submitted that the plaintiffs cannot bring these pro-

ceedings without the approval of the receiver, and to allow the proceedings to continue would be an abuse of the process of the Court.

In considering this submission, I bear in mind that the issue in this Originating Summons is whether the proof of debt submitted by the plaintiffs should have been approved by the liquidator. As I have said, it is alleged by the plaintiffs that the purchase price for the land bought by the Company had been paid for by the plaintiffs.

Again, it is not in dispute that the plaintiffs were dissolved in November 1970. There was a receiver appointed. The Company was wound up in January 1979. The proof of debt was submitted more recently in 1982. It was Dr. Huang who submitted the proof of debt against the Company. On these facts, in my opinion, the plaintiffs did not have the capacity to make the proof of debt against the Company nor to commence these proceedings against the liquidator.

There are other facts in the affidavit of the liquidator which show that the proof of debt of the plaintiffs cannot be sustained. I need only refer to an exhibit "WST 6" in the affidavit of the liquidator filed on November 8, 1983. It is a declaration of insolvency of the Company with a signed statement by the directors of the Company's assets and liabilities at the date of the declaration. Dr. Huang was one of the directors of the Company. He and the other directors made the declaration and signed the statement. Now, it is not shown in the statement that the Company was indebted to the plaintiffs or that the plaintiffs had paid $148,552.00 for the land. The only liability of the Company disclosed in the statement was the sum of $10,000 as "Estimated expenses of winding-up". In my view, these facts clearly support the submission for the defendant that the plaintiffs ought not to have commenced these proceedings and that it would be an abuse of the process of the Court to allow the plaintiffs to continue with them.

There is also a third submission of Mr. Daniel, on the first ground that the proceedings are frivolous and vexatious. It relates to limitation. It is submitted that on the facts the proof of debt is time-barred. He relies on the case of *Re Art Reproduction Co. Ltd.*[1]

However, Mr. Ee for the plaintiffs has referred me to a report on the Company made by Coopers and Lybrand dated September 11, 1973 of which only the first page is exhibited to an affidavit of Dr. Huang. It would appear from this page that Coopers had submitted their report on the accounts of the Company ended December 31, 1969. In it there is a reference to the sum of $98,552 relating to the land. The report then reads:

> "This property was paid for by cheque by Dr. H.C. Huang Dan Rakan2, a partnership of which two of the company's directors are the sole partners and the cost has accordingly been credited to that partnership account in the company's books."

The submission of Mr. Ee is that this is an acknowledgment of debt and the limitation period would run from September 11, 1973 and not from November 24, 1970 when the plaintiffs were dissolved. If that be right, then, Mr. Daniel concedes that the time-bar argument will not apply. No authority has been cited to me of whether a statement by a third party, as in this case, Coopers, binds the parties where time-bar is raised by one of them. However, no further consideration is required on the submission on limitation.

What is more important is that Coopers' report makes reference to $98,552 but that is not the amount claimed by the plaintiffs in the proof of debt; the amount claimed is $148,552. And, what is more unfortunate, in that proof of debt, Dr. Huang, on behalf of the plaintiffs, made the claim that the debt accrued on *September 9, 1978* (emphasis provided). This is to be found in the particulars of account which form part of the Statutory Declaration as to the Proof of Debt –

"6. 9-9-1978	Payment to Vendor's Solicitors for land at Bah Soon Pah Road"	$148,552.00¢

This simply cannot be true. At that time the plaintiffs were not in existence at all.

Having regard to these facts, I am of the opinion that not only are these proceedings an abuse of the process of the Court, but the claim of the plaintiffs is also frivolous and vexatious. The Originating Summons is dismissed. Costs will be in terms of the Summons-in-Chambers, that is to say, Dr. Huang "do pay to the Defendant his costs of these proceedings, including the costs reserved under the Order of Court herein dated September 5, 1984 and the costs of and occasioned by this application, such costs to be taxed".

Order accordingly.

Solicitors : *Boswell Hsieh & Lim; Andrew Ee & Co.*